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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/050,899	01/16/2002	Erik Paiste	272318.00010	5853

7590

03/12/2003

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EXAMINER

TRAN, KHOA H

ART UNIT

PAPER NUMBER

3634

DATE MAILED: 03/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/050,899

Applicant(s)

PAISTE ET AL.

Examiner

Khoa Tran

Art Unit

3634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 January 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, "a cymbal removably positioned intermediate the upper and lower felts" in claim 1 and "a key" in claim 10 must be shown or the features canceled from the claims. No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 5, 6, 10 and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. With respect to claim 1, the claim appears to be misdescriptive and/or inaccurate because there is no support for the display assembly to have a U-shaped base, see lines 20-21. With respect to claim 5, there is no antecedent basis for "one lock bar", see lines 1-2. With respect to claim 6, there is no antecedent basis for "the screw assembly", see line 3. With respect to claim 10, there is no antecedent basis for "a key", see line 1. With respect to claim 11, the positive recitation of "the musical instrument is a cymbal" renders the claim indefinite because the independent claim set forth the musical instrument as the intended use, see claim 9, lines 5-6. However, claim 11 removes previous set forth limitation and

substitute the musical instrument as being a part of the claim. This is improper. It should be noted that if the musical instrument is part of the claim then it should be positively set forth in claim 9, otherwise it is unclear how does the musical instrument recited in claim 11 further limiting the scope of an intended use relationship of an unclaimed element that is not a part of the claim invention.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 2 and 5-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Stone. Stone discloses an apparatus for supporting a musical instrument comprising:

a first arm (84) having a distal end and a proximal end, the proximal end interconnected to a base plate (62);

a second arm (92) having a distal end and a proximal end, the proximal end pivotally interconnected to the distal end of the first arm by a tilter mechanism (88, 90, and 86); and

a display assembly (10) having a panel (14) adapted to receive associated product literature interconnected to the distal end of the second arm;

with respect to claim 5, member (68) constitutes a lock bar with a screw pivotally mounted to the base plate. See Figure 1.

Claims 9 and 10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Ermanski. Ermanski discloses an apparatus for supporting a musical instrument comprising:

an articulated arm (12) having an end (14) adapted to be removably interconnected to a surface;

a support (18) interconnected with the articulated arm for use in retaining the musical instrument;

an angle display member (16) interconnected to the articulated arm and adapted to support a product literature thereon; and

a key adapted to be removably disconnected the articulated arm from the attachment surface. See Figure 1. With respect to claim 11, the support interconnected with the articulated arm is adapted to support the musical instrument of a cymbal thereon.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stone as applied to claims 2 and 5-8 above, and further in view of Hoshino. Hoshino teaches a notoriously old and well-known tilter mechanism (10) having two opposed

gears that faced (26 and 41) each other. See Figure 1. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the tilter mechanism of Stone with the tilter mechanism as taught by Hoshino in order to have the tilter mechanism that has gears and take play in pivoting the arm thus produce no unexpected result.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Gibitz, Austin, Stafford, Jr., Liao ('912) and ('561), Peritz, Lao, Ramirez, Diaz, Rahn, Jeantin, Donald B. Baker, Shepherd, Radek, Larson, Shea, Barnes, and Jahel are cited to show devices having similar configurations of design.

***Allowable Subject Matter***

Claim 1 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

The following is an examiner's statement of reasons for allowance:

Claim 1 is deemed to be allowable because there is no prior art of record that teaches or suggests a display cymbal apparatus having a display assembly of a base portion interconnected with a panel adapted to receive a product literature and interconnected to the upper felt, see lines 20-22

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoa Tran whose telephone number is (703) 306-3437. The examiner can normally be reached on Monday through Thursday from 9:30 A.M. to 7:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola, can be reached on (703) 308-2686. The fax phone number for this Group is (703) 305-3597 or (703) 305-3598.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-2168.

If the applicant is submitted by facsimile transmission, applicant is hereby reminded that the original should be retained as evidence of authenticity (37 CFR 1.4 and M.P.E.P. 502.02). In general, most responses and/or amendments not requiring a fee, as well as those requiring a fee but charging such fee to a deposit account, can be submitted by facsimile transmission. Responses requiring a fee which applicant is paying by check **should not be** submitting by facsimile transmission separately from the check. Responses submitted by facsimile transmission should include a Certificate of Transmission (M.P.E.P 512). The following is an example of the format the certification might take:

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Art Unit: 3634

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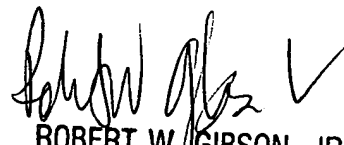
\_\_\_\_\_  
\_\_\_\_\_

(Signature)

Furthermore, please do not separately mail the original or another copy unless required by the Patent and Trademark Office. Submission of the original response or a follow-up copy of the response after your response has been transmitted by facsimile will only cause further unnecessary delays in the processing of your application; duplicate responses where fees are charged to a deposit account may result in those fees being charged twice.

Khoa Tran

March 3, 2003

  
ROBERT W. GIBSON, JR.  
PRIMARY EXAMINER  
ART UNIT 3634